BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DANNIE L. LEEDS)
Claimant)
VS.)
	Docket No. 225,038
DAVIS CONSTRUCTION)
Respondent)
AND)
)
FARM BUREAU MUTUAL INSURANCE COMPANY)
Insurance Carrier)

<u>ORDER</u>

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on April 3, 1998.

Issues

The sole issue on appeal is whether claimant's injuries arose out of and in the course of his employment. This issue is a jurisdictional issue pursuant to K.S.A. 1997 Supp. 44-534a(a)(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Order by the ALJ denied claimant's application for preliminary hearing benefits on the grounds that claimant sustained a subsequent accident. The Appeals Board finds that the Order should be affirmed.

The record establishes the claimant sustained an injury in the course of his employment for respondent on March 11, 1997. The employer provided treatment and one or more of the authorized treating physicians recommended epidural injections. At least one physician, Dr. Kevin Komes, concluded claimant needed no further treatment. Claimant was then involved in a fight with his girlfriend. Police were called and claimant was physically subdued by the police officers. Claimant injured his back at that time and was taken to the emergency room for treatment.

Dr. Jorge A. Gonzalez saw claimant both before and after the fight between claimant and his girlfriend. He had recommended epidural injections before the fight and again recommended them after the fight. His records indicate, however, that claimant's injuries were aggravated or exacerbated as a result of the fight. With the current state of the record, the Board agrees with the finding of the ALJ. Claimant has suffered a superseding and intervening accident. The decision by the ALJ is, therefore, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Steven J. Howard on April 3, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this	day of June	e 1998
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BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
Leigh C. Hudson, Fort Scott, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director